

3. Onsite Disposal Systems / OSDS Ordinance

Aimed at improving OSDS this ordinance requires inspection and certificates of properly functioning OSDS to be conducted and registered with the parish before property transfers can be completed. All new OSDS installed must register with the parish. Once registered all property owners with an OSDS on site must file an updated inspection certificate with the parish every fifth and tenth year of every decade. Additionally, utilities will not be turned on without evidence of OSDS certification. The parish is granted the authority to inspect OSDS for proper maintenance, require corrective actions, assess monetary penalties and pursue misdemeanor charges where appropriate.

NOTE: In Louisiana, 53 of the 64 parishes currently have onsite disposal system ordinances. The 11 parishes without OSDS ordinances are all in the northern half of the state. The typical ordinance adopted by the parishes is similar to the model ordinance contained in this suite of model ordinances. For example, most ordinances state that the connection of utility services will not be allowed if OSDS approval has not been granted through proper installation and inspection. Therefore, it is unlikely that Louisiana's coastal parishes will need to adopt further ordinances dealing with OSDS siting, but rather concentrate efforts on education and maintenance programs. The following model ordinance contains sections dealing with the development of a maintenance check system that the parishes may be interested in to compliment existing requirements.

3. Onsite Sewage Disposal Systems / OSDS Ordinance

Inspection of Residential Onsite Sewage Disposal Systems:
Inspections on a Five-year Schedule
and
Time of Property Transfer Certification Requirements

ARTICLE I

Purpose

Sec. 1:1 The _____ adopts this Ordinance that states the procedures, standards and enforcement that shall be used by

the _____ (city/parish engineering office), to manage any residential premises containing an Onsite Sewage Disposal System, ("OSDS") in order to promote the safety, health and general welfare of the community by ensuring the adequate disposal of sewage from homes served by an Onsite Sewage Disposal System ("OSDS").

Rules Adopted

Sec. 1:2 This Ordinance contains minimum standards and supplements the Rules and Regulations enacted by the Louisiana Department of Health and Hospitals. In addition, this Ordinance supplements Louisiana's law as it relates to public health and environmental quality and shall supercede all local minimum standards previously enacted that are inconsistent with this Ordinance.

Authority

Sec. 1:3 This Ordinance is enacted pursuant to _____ (reference parish enabling legislation, home rule document), to protect the public health, safety and welfare of the citizens of _____ Parish.

Jurisdiction

Sec. 1:4 The Parish _____ (official title) shall have jurisdiction to administer and enforce the provisions of this Ordinance. Nothing in this Ordinance, however, shall be construed to restrict or abrogate the authority of any municipality, incorporated city, village or township in _____ Parish to adopt standards that are more restrictive. However, whenever an inspection relating to health or sanitation is required, no municipality, incorporated city, village or township shall issue a license without first having obtained written approval from the Parish _____ (official title) indicating that the applicant has complied with the minimum requirements of this Ordinance.

ARTICLE II

Definitions

Sec. 2:1 The following rules of language shall apply to the text of this Ordinance: The word "shall" is mandatory. The word "may" is permissive. When not inconsistent with the context, words in the present tense shall include the future and words designating singular numbers shall include the plural.

Words and Terms

Sec. 2:2 The following words and terms used in this Ordinance, unless otherwise expressly stated, shall have the following meaning:

Authorized Agent

The term "Authorized Agent" shall mean any individual or corporation authorized, in writing, to act as the legal representative in all matters

authorized by the seller or purchaser.

Failure

The term "failure" is defined as follows: 1) the backup of sewage into a structure; 2) discharge of effluent onto the ground surface; 3) the connection of an OSDS to a storm drain; 4) liquid level in the septic tank above the outlet invert; 5) structural failure of a septic tank; 6) discharge of sewage into any stream or other body of water; 7) the liquid level in a disposal field above the outlet holes in the pipe of such field; 8) unsafe water sample; 9) substantial nonconformance with water well construction requirements; 10) substantial nonconformance with water well isolation from contamination source requirements, 11) connection of utilities without proper registration of OSDS.

Inspector

Person certified and registered with the parish to inspect OSDS systems for proper maintenance and functioning. (local certification requirements will be met if person has state certification)

Municipality

The term "municipality" shall mean any incorporated city, village, or township within _____ Parish.

OSDS

The term "OSDS" shall mean an onsite sewage disposal system.

Owner

The term "Owner" shall mean any person who has legal title to any premises.

Parish

The term as used here indicates the parish department/office designated to implement this ordinance.

Person

The term "person" shall mean any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.

Premises

"Premises" shall mean any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation or control, that contains any type of structure that is, was or will be inhabited either permanently or transiently, water well or septic tank, drains, drain field, underground tank or pipes or similar appurtenances containing sewage or other contaminants or combination thereof.

Substantial Conformance

The term "Substantial Conformance" shall mean there is a minimal likelihood of degradation of groundwater and surface water, or risk to public health caused by improper construction or location of an OSDS, or a malfunctioning OSDS.

ARTICLE III.

Limitations on Sale or Transfer of Property

Sec. 3:1 There shall be no sale, transfer or conveyance of a parcel containing an OSDS until the following conditions are met:

- The seller files an evaluation report, see exemptions in Section 3:2, by a Parish certified inspector to the _____ (designated parish official); and,
- The _____ (designated parish official) determines, based upon such report, that the OSDS is acceptable, or any necessary remediation is completed, or assured and accepted; and
- The _____ (designated parish official) authorizes the sale, transfer or conveyance of the parcel.

Evaluations

Sec. 3:2 Each OSDS in _____ Parish shall be inspected and evaluated prior to the sale, transfer or conveyance of property upon which an OSDS is located if certification has not been done within twelve months preceding the date of property transfer. Transfers exempt from inspections include:

- Transfer from a spouse.
- Change in ownership solely to exclude a spouse.
- Transfer subject to life lease or life estate, (until the life lease or life estate expires).
- Transfer to effect foreclosure or forfeiture of real property.
- Transfer by redemption from a tax sale.
- Transfer creating or ending joint ownership if at least one person is an original owner of the property or his or her spouse.
- Transfer to establish or release a security interest.
- Premises built within the previous twenty-four months prior to date of property transfer.
- Premises that shall be demolished and shall not be occupied after the property transfer.
- New homes that have not been occupied.

The owner of a premises containing an OSDS shall have the system evaluated by a Parish certified inspector. Persons certified to perform evaluations of an OSDS shall meet the minimum standards in Sec: 3.6 of this Article. After the evaluation is complete, the Parish shall send a letter to the owner or the owner's designated representative and any prospective purchaser describing the functional status of the OSDS and whether it is in conformance with all State and Parish Rules and Regulations governing OSDS.

Components of Evaluation

Sec. 3:3 Reports of evaluations shall include, but are not limited to:

- The address of the site.
- The parcel identification number.
- The name of the owner or owner's agent.
- The location of the system(s).
- A description of the current operational or functional status of the system(s).
- Identification of any necessary repairs or replacement of all or portions of the system(s).
- The results of a bacteria and nitrate drinking water test, and other water quality parameters as required by the Parish.
- Other relevant or unusual observations related to the system(s).
- Recommendations to extend the life of the system(s) and to prevent the premature failure of the sewage system(s).
- Educational material(s) about system(s) maintenance that have been approved by the Parish.
- Completed forms approved by the Parish.

Certified Copy of Evaluation

Sec. 3:4 A certified copy of the inspectors' evaluation report of an OSDS shall be provided to the owner and a copy filed with the Parish. Such reports shall be freely available to the public through the Public Records Law (La. R.S. 44:1-37)

Performance Standards

Sec. 3:5 The evaluation shall determine whether the system(s) adversely affects the public health and environment or violates any other applicable rules or regulations.

Registration and Certification

Sec. 3:6 All inspectors performing evaluations under this Ordinance must be registered with the Parish and certified before undertaking any evaluations. All qualified inspector applicants must file an application with the Parish, pay the registration fee and satisfactorily complete a training course approved by the Parish. Prospective inspectors must demonstrate knowledge of construction practices, operational standards as well as the causes and indicators of OSDS failures. No evaluation reports shall be accepted from individuals not certified by the Parish. **(Note: Since Louisiana has state certification procedures, parishes may choose to accept state certification, rather than designing their own program.)**

Sec. 3:7 The (designated parish official) may de-certify any inspector under one or more of the following circumstances:

- The inspector fails to comply with the Ordinance.
- The (designated parish official) determines that the inspector is incompetent.
- The inspector is unable to properly perform an evaluation of an OSDS.
- The inspector is negligent in the discharge of his/her duties as outlined in the certification requirements.

The inspector submits false or misleading information.
Significant information is missing from the evaluation report and/or is not provided within three (3) business days after being requested by the Parish.
The inspector does not maintain the required certification as required by this Ordinance.

Sec. 3:8 The Division shall give written notice to an inspector before s/he is de-certified by the (designated parish official). The inspector shall be given an opportunity at an informal meeting with (designated parish official) to demonstrate why s/he should not be de-certified. Any inspector who is de-certified may appeal that decision by following the procedure in Article XIII of this Ordinance.

Sec. 3:9 If an inspector is de-certified, re-certification shall be contingent upon completing the requirements established by the Parish.

ARTICLE IV.

Responsibilities of Various Parties:

Owner

Sec. 4:1 Owners are responsible for hiring certified inspectors to perform inspections under this Ordinance prior to the sale of any premises that s/he owns and during the fifth and tenth year of every decade. The owner must also secure a letter from the (designated parish official) indicating the OSDS complies with this Ordinance before the sale of any premises that s/he owns. Owners are responsible for maintaining the OSDS on their property and shall notify the Parish if the inspector's evaluation report or septic tank cleaner's report indicates a failure of the system or the owner observes a failure of the system. When an OSDS fails, as defined in Article II, the owner, agent or other responsible party shall contact the Parish and shall complete all repairs as required by the Parish.

(designated parish official)

Sec. 4:2 The Responsibilities of the (designated parish official) are as follows:

Administer and enforce this Ordinance.

Maintain the most current OSDS evaluation report as long as the property is served by an OSDS and for three years thereafter.

Maintain a list of certified inspectors qualified to perform inspections under this Ordinance.

Require remediation where there is evidence of a system failure.

Create and maintain a database of systems inspected, evaluated and re-mediated as well as newly installed systems.

Establish criteria for the inspection of OSDS and the certification of inspectors and make such criteria and related forms available to the public.

Require risers, observation ports and other features to facilitate evaluations when

issuing permits for installation of OSDS.
Issue authorizations for sale, transfer or conveyance of property.

ARTICLE V.

New OSDS Registration

Sec. 5.1 An owner shall not be permitted to install, or replace an OSDS without prior approval of the Parish. This section does not preclude the requirements for permits where necessary.

Sec. 5.2 Every new OSDS placed on property within _____ Parish will be registered by the owner of the premises with the _____ (designated parish office). Registration will include certification by a registered inspector that the OSDS was sited away from unsuitable (due to soil and hydrology) areas.

Registration required for water and utility connection

Sec. 5.3 OSDS Registration will be required for water and utility connections. Connections of utilities will not be made without evidence of proper OSDS registration. Failure to follow these provisions is a violation of this ordinance by the owner of the premises.

Five-Year Inspection Schedule

Sec. 5.4 Once registered, the owner of property, upon which an OSDS is located, has the responsibility to file with the _____ (designated parish office) every fifth and tenth year of each decade, a certification by a registered inspector that no OSDS failure is currently occurring with the evaluated system.

Article VI

Fees

Sec. 6:1 Fees to cover expenses, including but not limited to overhead, labor, storage, training, etc., by the Parish, may be adopted. Fees shall be paid when inspection reports are filed with the Parish. Fees must be paid before the property is transferred.

ARTICLE VII.

Inspection Notification

Sec. 7:1 If, after reviewing the inspection, the (designated parish official) determines that the OSDS is not in substantial conformance as defined, then the property owner shall be subject to enforcement as provided in this Ordinance. The Parish shall notify in writing the owner and/or purchaser or transferee or other person with a legally recognizable interest in the property. This written notice shall be sent no later than five (5) business days after the determination is made or from the date that the inspection report of the premises is filed and reviewed by the Parish. Any party is considered notified if the notice is sent to that party's last known mailing address or to the property address if the party occupies the premises with the

non-conforming OSDS.

ARTICLE VIII.

Corrective Action

Sec. 8:1 Upon receiving written notice from the Parish of noncompliance with this Ordinance, the owner, buyer or authorized agent shall, within thirty (30) days, submit a proposed corrective action and contract for services in order to bring the affected system into compliance with applicable laws. In addition, the owner, buyer or authorized agent may be required to place into an escrow account a deposit of a surety or performance bond or cash in an amount equal to one and one-half times the estimated cost of the contract guaranteeing performance of such contract. If at any time thereafter the estimate cost is adjusted, then higher or lower changes to the amount in escrow can be required. The (designated parish official) shall review the proposed corrective action and amend it as required to conform to federal, state and local laws, rules and regulations. All necessary corrective action shall be completed within one hundred eighty (180) days following Parish approval of the proposed correction action plan. Once the Parish gives final approval of the completed corrective action, the system shall be deemed to be in substantial conformance with this Ordinance and any affidavit previously filed with the Registrar of Deeds shall be discharged. If an OSDS presents an immediate health hazard, the owner or other responsible party shall take such measures, in cooperation with the Parish, that will immediately reduce or eliminate the impact of such failure until the full remediation plan can be implemented as described earlier in this Paragraph.

Sec. 8:2 A person who disputes any Parish decision concerning the violation of this Ordinance shall have the right to a hearing and appeal using the appeals process in Article XI. Any appeal shall not stay an owner's, buyer's or authorized agent's obligation to take measures to reduce or eliminate the impact of a failure until a full remediation plan can be determined and implemented.

ARTICLE IX.

Enforcement and Compliance

Sec. 9:1 If, after investigation, the Parish believes that a person is violating this Ordinance, the Parish shall attempt to enter into a voluntary agreement with the property owner to resolve the violation. If a voluntary agreement cannot be reached, the Parish may issue a violation notice to the owner. A statement of facts upon which the notice is based shall accompany the violation notice.

Inspection

Sec. 9:2 The Parish may, after presenting proper credentials and other documents as may be required by law, and upon stating the authority and purpose for the investigation, enter and inspect any property at reasonable times to ascertain compliance or noncompliance with this Ordinance or Rules promulgated under this Ordinance. This may include:

Inspection at reasonable times of any parcel containing an OSDS and related

systems.

Collection of evidence and information for the purpose of determining compliance with this Ordinance or Rules promulgated under the Ordinance.

Noncompliance with inspection

Sec. 9:3 If an owner, transferee or purchaser does not comply with the requirements of this Ordinance, (designated parish official) or his/her duly authorized representative may record an affidavit that details the non-compliance with the Parish Registrar of Deeds.

ARTICLE X.

Specific Enforcement Options:

Violation of the Regulation

Sec. 10:1 After learning that this Ordinance has been violated, the (designated parish official) or his/her designated representative may:

- Issue a Cease and Desist Order and/or suspend any permit, certificate or other approval issued pursuant to this Ordinance to the owner or other party violating this Ordinance, and afford the owner or other interested party Notice and Opportunity for Hearing.

- Request that Parish Counsel file a legal action to enjoin the violation. In addition, the (designated parish official) may seek to recover any and all costs related to correcting, removing or abating the violation.

Issuance of Monetary Civil Penalties

Sec. 10:2 If the (designated parish official) or his/her designated representative believes that a person is violating a provision of this Regulation or an order issued pursuant to this Ordinance, the representative may issue a citation within ninety (90) days after the alleged violation is discovered. The citation shall state with particularity the nature of the violation, including reference to the Section of the Ordinance alleged to have been violated, the civil penalty established for such violation, if any, and a right to appeal the citation pursuant Article XI of this Ordinance. The citation shall be delivered or sent by registered mail to the alleged violator.

- Any party issued a citation may, within ten (10) days from the date the citation is issued, request an informal conference at which time the person may indicate why s/he believes that s/he has not violated this Ordinance.

- Any party issued a citation may appeal the citation to the (designated parish official) or his/her designated representative within thirty (30) days after the citation is issued. The appeal shall be conducted in accordance with Article XI of this Ordinance.

- A person aggrieved by a final decision of the (designated parish official) or his/her designated representative, may petition the Circuit Court of the Parish where the premises is located for review. The time period for appeal shall begin to run the day after the date of such final decision.

Schedule of Monetary Civil Penalties

Sec. 10:3 Monetary civil penalties may be imposed according to the following schedule:

First violation: Up to:	\$ 100.00
Second violation:	\$ 250.00
Third and subsequent violations each:	\$ 500.00

Day-by -day Violation

Sec. 10:4 A civil penalty levied under this Section may be assessed for each violation or day that the violation continues. The civil penalty may be for a specified violation of this Ordinance or promulgated Rule, that the (designated parish official) or his/her designated representative has the authority and duty to enforce.

No Citation, not a waiver

Sec. 10:5 A decision by the (designated parish official) or his/her designated representative not to issue a citation shall not be construed as a waiver of any other rights or remedies authorized by law or this Ordinance.

Conviction of Misdemeanor

Sec. 10:6 Any person who violates this Ordinance is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than \$200.00 or both. Conviction by jury, court or voluntary plea and acceptance by court under this provision shall not waive any other claim for fines, costs, injunction or other relief authorized by this Ordinance. Each day that a violation of this Ordinance exists shall constitute a separate offense.

Assessment against the Property

Sec. 10:7 If an owner does not have his/her property evaluated as specified by this Ordinance, the Parish shall cause an inspection to be performed and may charge all costs and fees for the evaluation to the owner of the premises.

Sec. 10:8 If the owner or party violating this Ordinance refuses on demand to pay such expenses incurred by the Department to abate, correct or remove a violation, unsanitary condition or nuisance, the sum shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general tax laws of this State.

Right to Obtain Samples

Sec. 10:9 An inspection under Sec. 10.2 shall include the right to obtain samples where the (designated parish official) or his/her designated representative has reason to believe that there is a likelihood of contamination of surface water, ground water, water supply or other unsanitary conditions. Upon written notice, an owner or occupant of premises from which such inspection is sought shall cooperate with the Health Officer or his/her designated representative.

ARTICLE XI.

Hearings and Appeals

Sec. 11:1 If an owner or interested party is adversely affected by any decision under this ordinance, s/he may request in writing a Hearing before the _____ (designated parish authority) or its designated Committee within thirty (30) days of the date of such decision. The (designated parish office) shall issue a Notice of Hearing within fifteen (15) days after receiving the request. A Hearing shall then be held at the next regular meeting of the designated parish authority (or its designated committee), scheduled for such purposes; provided, however, that a Hearing shall be conducted no later than sixty (60) days after the Notice of Hearing is mailed to the owner or interested party. The designated parish authority (or its designated committee) shall affirm, reverse or modify the contested decision by a majority vote of the entire Committee. The decision by the designated parish authority (or its designated committee) shall be in writing and state the reasons and grounds for such decision. A copy shall be furnished to the owner, any interested person, and the designated parish office within thirty (30) days of the decision.

ARTICLE XII.

Miscellaneous Provisions

Severability

Sec. 11:1 Each provision of this Ordinance must be interpreted in a way that is valid under Louisiana law. If any provision is held invalid, the rest of the Ordinance shall remain in full effect.

Ordinance Adoption

Sec. 11:2

This Ordinance # _____ is adopted by _____ Parish Government by the following vote.

Effective Date

Sec. 11.3

This Ordinance # _____ will become effective _____.